

### **REMARKS**

This responds to the Office Action dated June 26, 2007.

Claims 11-12 and 14-16 are amended. Claims 11-12 and 14-20 are now pending in this application.

#### **Declaration and Power of Attorney**

The Office Action states that a new oath or declaration is required in compliance with 37 C.F.R. 1.67(a). Paragraph four of the Combined Declaration and Power of Attorney as submitted states: "I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with 37 C.F.R. § 1.56 (attached hereto)." As Applicant understands it, the objection to the declaration is based upon the use of the phrase "material to the patentability of this application" instead of "material to patentability of this application" which the Office Action asserts to be acceptable. The Office Action thus seems to be objecting to the definite article "the" preceding the word "patentability." Applicant can find no authority that would mandate the wording as suggested in the Office Action and respectfully requests withdrawal of this objection. If the objection to the Combined Declaration and Power of Attorney as submitted is to be maintained, Applicant requests that a citation to proper authority be supplied and/or a reasoned statement as to how the use of the word "the" in front of "patentability" could make the meaning of the sentence any different from the sentence without the word "the" that is asserted to be correct.

#### **§103 Rejection of the Claims**

Claims 11-12 and 19-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kramer et al. (U.S. Publication No. 2002/0161410A1, hereinafter Kramer'410) in view of Ding (U.S. Patent No. 6,424,865, hereinafter Ding). Claims 14 and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kramer'410 in view of Ding as applied to claim 11 above, and further in view of Salo et al. (U.S. Patent No. 5,487,752, hereinafter Salo). Claim 15 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Kramer'410 in view of Ding and Salo as applied to claim 14 above, and further in view of Burnes (U.S. Publication No. 2004/0220636A1, hereinafter Burnes). Claims 14-16 were rejected under 35 U.S.C. § 103(a) as

being unpatentable over Kramer' 410 in view of Ding as applied to claim 11 above, and further in view of Struble et al. (U.S. Publication No. 2003/0199956A1, hereinafter Struble). Claims 17 and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kramer' 410 in view of Ding as applied to claim 11 above, and further in view of Zhu et al. (U.S. Publication No. 2002/0120306A1, hereinafter Zhu). Claims 17 and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kramer' 410 in view of Ding as applied to claim 11 above, and further in view of Pastore et al. (U.S. Patent No. 7,065,405, hereinafter Pastore). The rejections are traversed and reconsideration is respectfully requested.

As amended herein, claim 1 recites a method in which a cardiac pacing device is configured to: deliver cardiac function therapy that effects reversal of ventricular remodeling, temporarily suspend delivery of cardiac function therapy and assess the patient's cardiac function by comparing a measured cardiac output with a measured exertion level and computing a cardiac function parameter indicative as to whether the patient's cardiac output is adequate for the measured exertion level, continue delivery of cardiac function therapy if the patient's cardiac function is determined to be inadequate, and cease delivery of cardiac function therapy if the patient's cardiac function is determined to have improved to a specified extent. The Kramer '410 reference does disclose a device configured for delivering cardiac function therapy that effects reversal of ventricular remodeling, but it does not disclose that the device is configured to temporarily stop such therapy in order to ascertain its effects. The Ding reference does disclose the measurement of ventricular conduction delays during intrinsic beats and the adjustment of pacing parameters in accordance therewith. The therapy delivered in Ding, however, is pacing therapy that compensates for conduction delays and does not have the effect of improving those delays over time. Also, the stoppage of pacing therapy in Ding in order to measure the conduction delays is for the purpose of adjusting pacing parameters and not to decide whether or not to continue delivering such pacing therapy. Although, as the Office Action points out, the Kramer '410 reference does disclose adjustment of the pre-excitation interval based upon measurement of particular parameters at page 4, paragraph 27, the reference does not disclose that therapy is ceased while such parameters are measured and does not disclose that the therapy is either continued or not based upon the measured parameters. Furthermore, neither the Ding reference nor the Kramer '410 reference contains any teaching relating to assessing cardiac

function by computing a cardiac function parameter indicative as to whether a patient's measured cardiac output is adequate for a particular measured exertion level. For these reasons, Applicant believes that no combination of elements in the Ding and Kramer '410 references would result in the method recited by claim 1 and further believes that none of the teachings in those references would lead one of ordinary skill in the art to modify the methods disclosed therein so as to constitute the method recited by claim 1.

For the reasons set forth above, Applicant does not believe that the method as recited by claim 11 is rendered obvious by the prior art of record. It is further asserted that the limitation recited by 12 and 14-20 are neither taught nor suggested by the cited references in the context of their combination with claim 11. Withdrawal of the rejections is respectfully requested.

### CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (847) 432-7302 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date October 26, 2007

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 26 day of October 2007.

Name

Signature